

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 512 of 1986

with

FIRST APPEAL No 279 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAVIKUMAR V BHARDWAJ

Versus

KARSHANBHAI M BHARVAD

Appearance:

1. First Appeal No. 512 of 1986
MR PV NANAVATI for Petitioner
NOTICE SERVED for Respondent No. 1
DELETED for Respondent No. 2
MR MTM HAKIM for Respondent No. 3
MR RAJNI H MEHTA for Respondent No. 5
MR KF DALAL for Respondent No. 6
2. First Appeal No 279 of 1986
MR MTM HAKIM for Petitioner
MR KF DALAL for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 22/08/2000

ORAL JUDGEMENT

Both these appeals U/S. 110-D of the Motor Vehicles Act, 1939, (Old Act) arise out of common judgment rendered in M.A.C.P. No. 157 and 163 both of 1982 and also raise out of the common accident between the comon parties and raised similar question, therefore, they are being disposed of by this common judgment.

F.A. No. 512/1986, is against the award of Rs.96,000/for personal injuries against the claim amount Rs.1,50,000/- by passenger in auto rickshaw (Claimant Ravi) in MACP No. 157 of 1982 whereas, F.A. No. 279 of 1982, is filed by the auto rickshaw driver in MACP No. 163 of 1982, wherein, the Tribunal has assessed an amount of Rs. 52,000/- against the claim of Rs.1,00,000/- for personal injuries, but awarded only Rs.26,000/- holding the claimant being the rickshaw driver, as contributory negligent in happening of the accident, which took place on 17.12.1981 at about 12:00 noon.

In short, both these appeals are at the instance of claimant. In one appeal, injured claimant Ravi has claimed enhancement of Rs.25,000/- only, whereas, rickshaw driver has claimed full amount of Rs.1,00,000/inter alia contending that contributory negligence of 50% in the happening of road accident is wrongly made and also, challenged the quantum of compensation for personal injuries. We have extensively examined the documentary and testimonial evidence laid before the Motor Accident Claim Tribunal, Auxiliary at Ahmedabad and having considered the facts and circumstances and the relevant proposition of Law of Tort.

The claimant, personally injured, aged about 26 yrs. in F.A. No.512 of 1986, in MACP No. 157 of 1982, who was traveling in auto rickshaw at the relevant time, has sustained serious injuries and he has been awarded only consolidated amount of Rs.96,000/- under both the heads with interest at the rate of 6% p.a. from the date of application till payment. Applicant was working at the

relevant time in Remica Plastic Machinery. Initially his salary was Rs.180/- p.m., as per the evidence of employer, which has come to be upheld and revised to Rs.500/- p.m. He had sustained serious injuries as per the medical evidence on record. He was examined by many doctors.

The injury certificate is produced, at Exh. 150. As per the certificate, claimant sustained one C.L.W. left pariatol region depressed fracture on the right parietal bone and one fracture on right clevical and, also, fracture of the right 4th and 5th ribs. He was kept as indoor patient and he was operated. He has, also, sustained permanent partial disablement in his right eye. He was treated by Dr. Abhay R. Vasavada. It is found from the medical evidence that the applicant claimant's eye is affected and he was all the times complaining of double vision. According to the evidence of Dr. Vasavada, the permanent damage is caused to the right side eye on account of parelisis on one of extra ocular muscles. The left superior oblique muscle, is, also, beyond repair. Dr. Vasavada is Ophthalmic surgeon and according to his evidence impairment caused to the right eye may be because of injury on the head sustained in the accident and it is beyond repair.

It is clear from the evidence of Orthopaedic surgeon Dr. Shah, that the claimant Ravi has sustained permanent partial disablement to the extent of 25% in functioning of left leg which is taken by the tribunal at 10% of the body and has awarded only an amount of Rs.96,000/-. After having taking into consideration the facts and circumstances and the nature of injuries and type of imperiment in left leg and in the eye, we are of the opinion that the enhancement of claim in this appeal of Rs.25,000/- is quite justified. Therefore, appeal is required to be allowed.

In so far as the F.A. 279 of 1986, arising against award of Rs.26,000/- in favour of appellant original-claimant rickshaw driver in MACP No. 163 of 1982, we are of the opinion that the description exercised by the Tribunal and the assessment made by the Tribunal in the light of the evidence on recrod, and hodling rickshaw driver 50% contributory negligent in accident could not be said to be unjustified, unreasonable and requiring the interference of this Court. The manner in which the accident has occured, leaves that, in any manner, mainly the rickshaw driver was responsible.

The accident occured on 17.12.1981 at 12:00 noon, when

the auto rickshaw bearing registration No. GTH 3068 was proceeding on the public road from the direction, Sahajanand College to Gujarat University like that West to East, driven by the claimant appellant before us and at that time, a motor truck bearing registration No. GRT 5466 came from the direction leading North to South i.e. Old Sachivalaya to Vastrapur side. It is found by the tribunal that on the left side of the truck, the driver of the auto rickshaw original-claimant came unmindfully had entered into the cross road in the middle and at the same time, the driver of the truck, also, came negligently to the half way to the cross roads where the accident occurred. Ordinarily, the share of bigger vehicle could be presumed higher, however, in the present case, the manner in which the rickshaw driver entered into the cross roads and the direction, which was on the left, of the truck apportionment of the contribution in the happening of the accident between rickshaw and the truck to the extent of 50% each made by the Tribunal appears to be liberal in favour of the rickshaw driver. Therefore, in our opinion, the assessment of compensation and apportionment and the extent of liability is second contention in the appeal. In so far as, the compensation awarded to the claimant rickshaw driver, could not be said to be in any way unjust, unreasonable or perverse or also, in any way it could not be said to be inordinate or inadequate amount of compensation, requiring interference of this Court and since the tribunal has rightly awarded the interest at the rate of 6% p.a. and we do not propose to interfere with regard to the rate of interest.

The claimant Ravi Bhardwaj who was the passenger in auto rickshaw and the liability of the insurer of the auto rickshaw original opponent No. 5 in that petition is rightly not questioned and therefore, it would remain unaffected.

In the facts and circumstances, therefore, the First Appeal No. 512 of 1986 is fully allowed with same amount of interest and cost, whereas, First Appeal No. 279 of 1986 is dismissed leaving the appellants to bear the cost at their own.

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